

PCLL CONVERSION EXAMINATION JANUARY 2020

Title of Paper : Hong Kong Land Law
Date : 6 January 2020
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 4 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2020

Hong Kong Land Law

Question 1 (50 marks)

- (a) Four years ago, Victor purchased a flat in a multi-storey building in Ho Man Tin Street, Kowloon ('the flat'), assisted by a mortgage from the HSBC. He then moved in with his wife, Rebecca. Victor is at all times the registered owner of the flat. The mortgage has also been registered at the Land Registry. In June 2019, their relationship became bitter. Rebecca has in fact paid the full deposit for the flat and all the mortgage repayments to date while Victor has contributed nothing.

Explain the respective interests of Victor, Rebecca and the HSBC in the flat or in the proceeds if the flat is being sold at a price (after deducting all costs and expenses) higher than the outstanding indebtedness of the mortgage. **(15 marks)**

- (b) Pancy, a professional musician specialising in playing and teaching the xylophone, is considering buying the flat. The multi-storey building was constructed in 1970 on the land which was first granted to Diego Construction Ltd ('Diego') under Conditions of Sale dated 1968 ('the Conditions of Sale'). No certificate of compliance has been issued and registered. The building is also governed by a Deed of Mutual Covenant dated 1970 executed between Diego and a Mr. James Tin. The Deed of Mutual Covenant stipulates that the use of the flat is residential.

Explain whether Pancy can use one of the rooms in the flat for giving xylophone lessons to her pupils who pay for such lessons. If you need further information to answer this question, identify such information. **(30 marks)**

- (c) Explain the nature of interest held under the Conditions of Sale. **(5 marks)**

Question 2 (50 marks)

- (a) "The system produced by the LRO (Lands Registration Ordinance) is that of registration of deeds, under which registration has no effect on the creation of interests in land. Registration does not produce title; instead, it gives priority to those interests which can be registered, it acts as a record of transactions, and it acts as a notice to those dealing with land..." (Sihombing and Wilkinson, *A Guide to Hong Kong Conveyancing*).

Explain to what extent you agree with this quotation, with illustration by way of two examples. **(12 marks)**

- (b) Peter, a businessman who operates a logistics company called Ponderland Ltd., is planning to expand Ponderland's business and buy open land in the northern New

Territories as a depot for additional delivery vans that Ponderland expects to acquire late next year. Alan, an estate agent, has introduced to Peter some land near Sha Tau Kok owned by Venturous Ltd ('Venturous'). The asking price proposed by Venturous is acceptable to Peter and the land appears to be suitable except that it is currently occupied by Tyson, a tenant. Tyson uses the land for storage of used cars.

Alan informed Peter that, according to Venturous, the tenancy agreement between Venturous and Tyson was made orally and was for two years expiring on 30 June 2020. However, when Peter visited the land to inspect it last week, Tyson told Peter that the oral tenancy was for three years expiring on 30 June 2021 and that when granting him the tenancy, Venturous had promised in a letter that Tyson could have a further five years if he wished to do so. A land search, however, does not reveal any record of Tyson's interest as claimed.

Explain whether Ponderland will not be able to take possession of the land for six years after 30 June 2020 (being the one remaining year of tenancy claimed by Tyson plus the 5-year optional further term which Tyson said was granted by Venturous).

(20 marks)

- (c) On the other hand, the land search register shows an Assignment of Rental Income received by Venturous in respect of leasing out the land in favour of a finance company called Easy Credit Ltd. for the due repayment of a loan in the sum of HK\$1 million. The Assignment of Rental Income is dated 1 October 2018 and was registered on 29 October 2018. Furthermore, the register also shows two charging orders (both nisi and absolute). One is in favour of the Bank of East Asia for a judgement debt of HK\$1.2 million owed by Venturous; this charging order was registered in December 2014. The other is in favour of the HSBC for a judgment debt of HK\$ 1.5 million owed by Venturous; this charging order was registered in November 2019.

Explain whether Ponderland will be able to purchase the land free from any of those interests.

(18 marks)

Question 3 (50 marks)

- (a) Teddy and his wife, who have recently returned to Hong Kong from New Zealand, would prefer to live in their own house with a garden and an open view. Last weekend they were introduced to some houses at a village in Sai Kung by an estate agent. They particularly like one house there, construction of which was almost completed. The agent told them that the house was being built by a developer on land owned by a man from the village who is now living in Malaysia. The house is 27 feet tall, has three storeys (each 700 square feet in area), a flat roof and small balconies. The agent said that anyone who purchased the house could use the flat land next to the house as a garden and the land between the house and the road for car parking. According to the agent, the purchaser could also add an extension to the house on the ground floor, make extra rooms on the roof and increase the size of the balconies. The agent also told them that to purchase the house, they would have to make a large down-payment

and then wait for several months whilst necessary formalities were carried out before a sale and purchase agreement would be signed.

Advise on all the matters arising from the facts given above. **(20 marks)**

- (b) In 1988 Prosperous Development Ltd ('Prosperous') purchased a plot of undeveloped land in the New Territories ('the land') from the Government. Prosperous was awaiting the construction of a new road adjacent to the land before it would proceed with the construction of a low-rise housing development on the land. The new road remained at the planning stage, however, and Prosperous postponed its development project. In 1990 Mr. Tung Fai, a villager who owned adjacent land, started to plant flowers for sale in Lunar New Year on a small part of the land. By 1992, since no one came forward to object, he had covered the whole of the land with planted flowers. In 1995 he leased out the land to Organic Farming Co Ltd ('Organic') for 5 years and Organic continued to grow flowers there for sale in their outlet in Kowloon. After the expiry of the 5-year lease in 2000 Mr. Tung Fai continued to grow his own flowers on the land until his death in 2008. His son Fred immediately took over the flower growing business on the land and in November 2010, he erected a fence around the land. In January 2019, Prosperous wrote to Fred saying that he had to leave the land immediately as the Government had then approved plans for the construction of the road and Prosperous intended to commence the construction of their low-rise housing development on the land immediately. Having received no response from Fred, Prosperous commenced legal action in June 2019 to recover the land.

Explain who has a valid claim to the land. **(30 marks)**

~ End of Examination Paper ~